

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 585 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? NO.
2. To be referred to the Reporter or not? NO.
3. Whether Their Lordships wish to see the fair copy of the judgement? NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO
5. Whether it is to be circulated to the Civil Judge?  
NO.

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STATE OF GUJARAT

Versus

SURESH L MAKWANA

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Appearance:

MR UL TRIVEDI, APP for Appellant.  
MR DK MODI for Respondent No. 1

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CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 06/11/98

ORAL JUDGEMENT

This appeal is directed against the judgment and order dated 1-6-89, passed by the learned Judicial Magistrate First Class, Jamnagar, in Criminal Case No.773 of 1985, whereby the learned Magistrate acquitted the respondent from the charges framed against him for the offences punishable under Sections 7 and 16 of the Prevention of Food Adulteration Act, 1955 ( to be referred to as " the Act " ).

2. The complainant- H.S.Pandya, Food Inspector, Jamnagar, on 13-12-84 at about 15-30 hours collected sample of turmeric powder from the shop owned by the respondent. The said sample of turmeric powder was collected as per the provisions of Rules framed under the Act. The said sample was sent to Food Analyst for analysis wherein it was found that the said sample of turmeric powder was adulterated. After obtaining the consent of the Competent Authority under Section 20 of the Act, the Food Inspector lodged the complaint against the respondent before the Judicial Magistrate First Class, Jamnagar, which came to be numbered as Criminal Case No.773 of 1985.

3. During the trial, the Food Inspector examined himself and produced the relevant documents in support of the prosecution case. The statement of the respondent was recorded under Section 313 of the Code of Criminal Procedure.

4. The learned Magistrate acquitted the respondent mainly on the ground that there was no valid written consent of the Competent Authority and there was breach of Rule 18 of the Prevention of the Food Adulteration Rules. The said order of acquittal is challenged by the State of Gujarat by filing this appeal.

5. Learned A.P.P. Mr. U.A.Trivedi has taken me through the entire evidence on record and submitted that the order of acquittal recorded by the learned Magistrate is illegal and this appeal deserves to be allowed.

6. The evidence of the Food Inspector does not prove that the container in which the sample of turmeric power was collected was sealed and he had violated the mandatory provisions of Rule 14. It is held by this Court in a decision reported in 1996 (1) FAC 282 State of Gujarat vs. Gobar Gopal Tapubhai Dholarya that Rule 14 if mandatory, non observance thereof will be fatal of the prosecution case. The evidence of the Food Inspector if compared with the report of the analyst Exh.14, on the contrary proves that there was no seal on the container, and therefore, there is breach of Rule 14. As the respondent has not followed the mandatory provisions of Rule 14, the respondent deserves to be acquitted. Hence, on this ground alone the order of acquittal is required to be confirmed.

7. Having discussed the foregoing and as the Court is in agreement with the view expressed by the trial court, I am not discussing the evidence of each witness

in detail in view of the observations made by the Hon'ble Supreme Court in the case of State of Karnataka v. Hemareddy, A.I.R. 1981 SC 1417, which reads as under :

" This Court has observed in Girija Nandini Dev v. Bigendra Nandini Choudry ( 1967 ) 1 SCR 93 : AIR 1976 SC 1124 that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the court the decision of which is under appeal, will ordinarily suffice. "

8. As a result of the foregoing discussion, the order of acquittal is not required to be interfered with. The appeal is dismissed.

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